

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL RAIHALA,

Petitioner,

Case No. 07-CV-14083
HON. AVERN COHN

v.

CASS COUNTY DISTRICT JUDGE,

Respondent.

_____ /

ORDER REOPENING TIME TO FILE NOTICE OF APPEAL

I.

Petitioner, a state prisoner proceeding pro se and in forma pauperis, filed a complaint for declaratory relief. The Court dismissed the complaint under 28 U.S.C. § 1915(e)(2) because it failed to state a claim upon which relief may be granted. See Order of Summary Dismissal, filed October 11, 2007. Petitioner did not file a notice of appeal.

Thereafter, on December 11, 2007, Petitioner filed a motion to amend his pleading in which he sought to amend certain portions of his complaint. The Court denied the motion as moot. See Order filed December 19, 2007.

Before the Court is Petitioner's Motion to Reopen the Time to File an Appeal. Petitioner says he did not receive a copy of the Court's October 11, 2007 Order of Dismissal until January 9, 2008.

II.

Petitioner requests that the time for filing an appeal be tolled until he received a copy of the order of dismissal. Under Fed. R. App. P. 4(a)(1), Petitioner had 30 days

from the date of the order of dismissal to file an appeal. In this case, Petitioner had until November 11, 2007 to file an appeal of the order dismissing the complaint. Fed. R. App. P. 4(a)(6), however, indicates that a district court may reopen the time to file an appeal for a period of fourteen days (14) after the date when its order to reopen is entered, so long as all of the following conditions are satisfied:

(A) The motion to reopen is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) The court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry;

(C) The Court finds that no party would be prejudiced.

With respect to subsection (B), Petitioner indicates that he did not receive notice of the entry of the Court's October 11, 2007 order until he received a copy of it on January 8, 2008. The record is unclear as to whether a copy of the Court's October 11, 2007 order was properly mailed to Petitioner. Under these circumstances, the Court finds that Plaintiff did not receive notice of the order before January 8, 2008 as stated in his motion. Thus, subsection (B) is satisfied because Petitioner did not receive notice of the entry of the order until more than 21 days after its entry.

With respect to subsection (A), this is also satisfied because Petitioner filed his motion on January 16, 2008,¹ within 180 days of the October 11, 2007 order and within 7 days of receiving notice of entry of the order.

¹Under the prison mailbox rule, this court will assume that Petitioner actually filed his motion on January 16, 2008, the date that it was signed and dated.

With respect to subsection (C), Petitioner has not addressed the issue of prejudice. However, the Court finds that Respondent would not be prejudiced by the reopening of the time to file an appeal. This is particularly so because Respondent was not requested, nor required, to respond to Petitioner's complaint or his motion to file an amended complaint.

Petitioner shall have fourteen (14) days from the date of this Order in which to file a notice of appeal.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: January 23, 2008

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Michael Raihala, 221559, Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 48212 on this date, January 23, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160